

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA, }
 }
Plaintiff, }
 }
v. }
 Case No.: 2:06-CR-195-RDP-TMP
LUKE SIMON GOLJAN, }
 }
Defendant. }

MEMORANDUM OPINION

Magistrate Judge T. Michael Putnam has reported and recommended that (1) Defendant's motion to suppress (Doc. #22) be denied (Doc. #32), and (2) Defendant's motion to dismiss Count Two of the Indictment (Doc. #27) also be denied (Doc. #33). Objections have been filed. (Docs. #35, 36). The court has considered the entire file in this action, including the report and recommendations and the objections thereto, and has reached an independent conclusion that the report and recommendations are due to be adopted and approved.¹

Accordingly, the court hereby adopts and approves the findings and recommendations of the magistrate judge as the findings and conclusions of the court. Defendant's motion to suppress and

¹To be clear, the court agrees with Judge Putnam that 18 U.S.C. § 2251A(b)(2)(A) is neither vague nor likely to create a duplicitous charge, and that there is a key element in that statute that does not exist in § 2251(a)—control. That is, in the context of this case, the Government must show, *inter alia*, that the Defendant “offered” to “purchase” the “control” of a child for the purpose of producing a visual depiction of the child engaged in sexually explicit conduct. That element differentiates an offense under § 2251A(b)(2)(A) from one under § 2251(a) as the latter criminalizes merely “enticing” or “persuading” a child to engage in sexually explicit conduct without any control requirement. The court expresses no opinion about the alternative “lesser included offense” rationale stated by Judge Putnam in the first full paragraph that appears on page 5 of his Report and Recommendation on Defendant’s motion to dismiss. (Doc. #33). Indeed, the court need not address that issue now because it finds that Count Two states a separate offense than Count One, and the Government may go forward on its separate prosecution of that charge.

motion to dismiss are due to be denied. An appropriate order will be entered.

DONE and **ORDERED** this 15th day of November, 2006.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE